

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL P. KELLY  
6562 Tulip Street, Rear 2<sup>nd</sup> Fl.  
Philadelphia, PA 19135

Plaintiff,

v.

MARRIOTT HOTEL SERVICES  
1201 Market Street  
Philadelphia, PA 19107  
and  
MARRIOTT INTERNATIONAL, INC.  
10400 Fernwood Road  
Bethesda, MD 20817

Defendants.

CIVIL ACTION

No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**CIVIL ACTION COMPLAINT**

Plaintiff, by and through his undersigned counsel, hereby avers as follows:

**I. INTRODUCTION**

1. This action has been initiated by Michael P. Kelly (hereinafter referred to as "Plaintiff," unless indicated otherwise) for violations of the Age Discrimination in Employment Act ("ADEA" - 29 U.S.C. §§ 621 *et. seq.*). As a direct consequence of Defendants' unlawful actions, Plaintiff seeks damages as set forth herein.

**II. JURISDICTION AND VENUE**

2. This Court, in accordance with 28 U.S.C. § 1331, has jurisdiction over Plaintiff's claims because this civil action arises under laws of the United States.

3. This Court may properly maintain personal jurisdiction over Defendants because Defendants' contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendants to comply with traditional notions of fair play and substantial

justice, satisfying the standard set forth by the United States Supreme Court in International Shoe Co. v. Washington, 326 U.S. 310 (1945) and its progeny.

4. Pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2), venue is properly laid in this district because all of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district, and Defendants are deemed to reside where they are subject to personal jurisdiction, rendering Defendants residents of the Eastern District of Pennsylvania.

### **III. PARTIES**

5. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

6. Plaintiff is an adult individual, with an address as set forth in the caption.

7. Defendant Marriott Hotel Services (hereinafter individually referred to as "Defendant Marriott") is a Pennsylvania entity engaging in the business of providing hotel accommodations and other amenities to its guests.

8. Defendant Marriott International, Inc. (hereinafter individually referred to as "Defendant Marriott International") is a worldwide operator and franchisor of hotels and other lodging facilities which manages and operates including but not limited to the Defendant Marriott (franchise).

9. Upon information and belief, because of their interrelation of operations, common ownership or management, centralized control of labor relations, common ownership or financial controls, and other factors, Defendants are sufficiently interrelated and integrated in their activities, labor relations, ownership and management that they may be treated as a single and/or joint employer for purposes of the instant action.

10. At all times relevant herein, Defendants acted by and through their agents, servants and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for Defendants.

#### **IV. ADMINISTRATIVE EXHAUSTION**

11. In this lawsuit, Plaintiff files claims under the Age Discrimination in Employment Act ("ADEA").

12. Plaintiff filed timely charges of discrimination with the Equal Employment Opportunity Commission ("EEOC").

13. Over sixty (60) days have passed since Plaintiff's EEOC charge was filed; Plaintiff has therefore exhausted his administrative remedies in order to proceed under the ADEA.

#### **V. FACTUAL BACKGROUND**

14. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

15. Plaintiff is a 52-year old man.

16. Plaintiff was hired to work for Defendants in or about November 2005 and worked for Defendants for approximately five (5) years.

17. Plaintiff was employed by Defendants as a Front-Desk Associate and performed primarily duties of guest check-in/check-out, guest payments, as well as miscellaneous guest services and relations.

18. Plaintiff was the oldest Front Desk Associate during his employ with Defendants.

19. In the months preceding his termination, Plaintiff was subjected to a series of discriminatory comments by Defendants' management, including but not limited to: being told

that he should wear "Depends"; being told that he was "peeing too much" and that he should "get his prostate checked"; being told that he was "getting old"; being called, "the old guy,"; being called "Ben Franklin"; and related remarks about his balding.

20. Defendants' management even made discriminatory comments in front of other hotel guests, whereby Plaintiff felt even more humiliated.

21. Plaintiff's work performance was adequate and consistent throughout the time of his employ with Defendants.

22. Prior to his termination, Plaintiff complained to Defendants' management that he was being discriminated against because of his age.

23. Prior to his termination, Plaintiff experienced very significant animosity for complaining about age discrimination.

24. In the immediate weeks preceding his termination, Plaintiff was disciplined in writing approximately three times for mistakes relating to the check-in of "VIP guests."

25. The write pretextual discipline that Plaintiff received in the weeks preceding his termination were Defendant Marriott's stated reasons for his discharge.

26. The reasons proffered for Plaintiff's termination are for errors that younger employees commonly committed during Plaintiff's employ with Defendants, as well as after, however, none of these other younger employees have been terminated.

27. Plaintiff was replaced by someone younger than him.

**Count I**  
**Violations of the Age Discrimination in Employment Act ("ADEA")**  
**(Against all Defendants)**

28. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

29. Plaintiff believes and avers herein that his age was a determinative factor in his termination.

30. These actions as aforesaid constitute violations of the ADEA.

**Count II**  
**Violations of the Age Discrimination in Employment Act ("ADEA")**  
**-Retaliation-**

31. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

32. Plaintiff was terminated from Defendants for objecting and complaining about unlawful age discrimination practices within Defendants.

33. These actions as aforesaid constitute unlawful retaliation under the ADEA.

**WHEREFORE**, Plaintiff prays that this Court enter an Order providing that:

A. Defendants are to promulgate and adhere to a policy prohibiting retaliation/discrimination in the future against any employee(s);

B. Defendants are to compensate Plaintiff, reimburse Plaintiff, and make Plaintiff whole for any and all pay and benefits Plaintiff would have received had it not been for Defendant's illegal actions, including but not limited to back pay, front pay, salary, pay increases, bonuses, insurance, and benefits;

C. Plaintiff is to be awarded liquidated damages as permitted by applicable law in an amount believed by the Court or trier of fact to be appropriate to punish Defendants for their willful, deliberate, malicious, and outrageous conduct and to deter Defendants or other employers from engaging in such misconduct in the future;

D. Plaintiff is to be accorded other equitable and legal relief as the Court deems just, proper, and appropriate; and

E. Plaintiff is to be awarded the costs and expenses of this action and reasonable attorney's fees as provided by applicable federal and state law.

Respectfully submitted,

**KARPF & KARPf, P.C.**

By:

A handwritten signature in black ink, appearing to read 'C. E. Burke', written over a horizontal line.

Christine E. Burke, Esq.  
3070 Bristol Pike  
Bldg. 2, Ste. 231  
Bensalem, PA 19020

Date: September 30, 2010

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIACASE MANAGEMENT TRACK DESIGNATION FORM

Michael P. Kelly

CIVIL ACTION

Marriott Hotel Services, et al.

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

## SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

9/30/2010

Date

Christine Burke

Attorney-at-law

Plaintiff

(215) 639-0801

Telephone

(215) 639-4970

FAX Number

cburke@karpf-law.com

E-Mail Address

THE EASTERN DISTRICT OF PENNSYLVANIA  
sent to appropriate calendar.

of Plaintiff: 0502 Tulip Street Rear 2nd Floor Philadelphia PA 19135  
of Defendant: 1201 Market Street Philadelphia PA 19107  
10400 Fernwood Road Bethesda MD 20817

of Accident, Incident or Transaction: Defendants place of business  
Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?  
Yes ☐ No ☒

Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)  
Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?  
ATED CASE, IF ANY:  
Number: \_\_\_\_\_ Judge: \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Cases are deemed related when yes is answered to any of the following questions:  
Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☐  
Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☐  
Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☐

FILE (Place ☒ in ONE CATEGORY ONLY)

Federal Question Cases:

- ☐ Indemnity Contract, Marine Contract, and All Other Contracts.
- ☐ FELA
- ☐ Jones Act Personal Injury
- ☐ Antitrust
- ☐ Patent
- ☐ Labor-Management Relations
- ☒ Civil Rights
- ☐ Habeas Corpus
- ☐ Securities Act(s) Cases
- ☐ Social Security Review Cases
- ☐ All other Federal Question Cases  
(Please specify)

B. Diversity Jurisdiction Cases:

- 1. ☐ Insurance Contract and Other Contracts
- 2. ☐ Airplane Personal Injury
- 3. ☐ Assault, Defamation
- 4. ☐ Marine Personal Injury
- 5. ☐ Motor Vehicle Personal Injury
- 6. ☐ Other Personal Injury (Please specify)
- 7. ☐ Products Liability
- 8. ☐ Products Liability — Asbestos
- 9. ☐ All other Diversity Cases  
(Please specify)

ARBITRATION CERTIFICATION

Christine Burke  
(Check appropriate Category)  
counsel of record do hereby certify:  
☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;  
☐ Relief other than monetary damages is sought.  
DATE: 9/30/2010 Cu Rn Attorney-at-Law  
3081100  
CEB9351  
Attorney L.E.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.  
DATE: 9/30/2010 Cu Rn CEB9351  
3081100

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

KELLY, MICHAEL P.

(b) County of Residence of First Listed Plaintiff Philadelphia

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Karpf & Karpf, P.C., 3070 Bristol Pike, Building 2 Suite 231,  
Bensalem PA 19020, (215) 639-0801, cburke@karpf-law.com**DEFENDANTS**

MARRIOTT HOTEL SERVICES, et al.

County of Residence of First Listed Defendant PhiladelphiaNOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

- |   |  |   |  |  |  |
|---|--|---|--|--|--|
| <input type="checkbox"/> 110 Insurance  | <input type="checkbox"/> 310 Airplane                          | <input type="checkbox"/> 362 Personal Injury - Med. Malpractice         | <input type="checkbox"/> 610 Agriculture                                 | <input type="checkbox"/> 422 Appeal 28 USC 158                   | <input type="checkbox"/> 400 State Reapportionment                                     |
| <input type="checkbox"/> 120 Marine   | <input type="checkbox"/> 315 Airplane Product Liability        | <input type="checkbox"/> 365 Personal Injury - Product Liability        | <input type="checkbox"/> 620 Other Food & Drug                           | <input type="checkbox"/> 423 Withdrawal 28 USC 157               | <input type="checkbox"/> 410 Antitrust   |
| <input type="checkbox"/> 130 Miller Act   | <input type="checkbox"/> 320 Assault, Libel & Slander          | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 | <input type="checkbox"/> 820 Copyrights                          | <input type="checkbox"/> 430 Banks and Banking   |
| <input type="checkbox"/> 140 Negotiable Instrument                                | <input type="checkbox"/> 330 Federal Employers' Liability      | <input type="checkbox"/> 370 Other Fraud                                | <input type="checkbox"/> 630 Liquor Laws                                 | <input type="checkbox"/> 830 Patent                              | <input type="checkbox"/> 450 Commerce  |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment    | <input type="checkbox"/> 340 Marine                            | <input type="checkbox"/> 371 Truth in Lending                           | <input type="checkbox"/> 640 R.R. & Truck                                | <input type="checkbox"/> 840 Trademark                           | <input type="checkbox"/> 460 Deportation   |
| <input type="checkbox"/> 151 Medicare Act   | <input type="checkbox"/> 345 Marine Product Liability          | <input type="checkbox"/> 380 Other Personal Property Damage             | <input type="checkbox"/> 650 Airline Regs.                               | <input type="checkbox"/> 861 HIA (1395ff)                        | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations            |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 350 Motor Vehicle                     | <input type="checkbox"/> 385 Property Damage Product Liability          | <input type="checkbox"/> 660 Occupational Safety/Health                  | <input type="checkbox"/> 862 Black Lung (923)                    | <input type="checkbox"/> 480 Consumer Credit   |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits        | <input type="checkbox"/> 355 Motor Vehicle Product Liability   |   | <input type="checkbox"/> 690 Other                                       | <input type="checkbox"/> 863 DIWC/DIWW (405(g))                  | <input type="checkbox"/> 490 Cable/Sat TV  |
| <input type="checkbox"/> 160 Stockholders' Suits                                  | <input type="checkbox"/> 360 Other Personal Injury             |   | <input type="checkbox"/> 710 Fair Labor Standards Act                    | <input type="checkbox"/> 864 SSID Title XVI                      | <input type="checkbox"/> 810 Selective Service   |
| <input type="checkbox"/> 190 Other Contract                                       |  |   | <input type="checkbox"/> 720 Labor/Mgmt. Relations                       | <input type="checkbox"/> 865 RSI (405(g))                        | <input type="checkbox"/> 850 Securities/Commodities/Exchange                           |
| <input type="checkbox"/> 195 Contract Product Liability                           |  |   | <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act      | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | <input type="checkbox"/> 875 Customer Challenge 12 USC 3410                            |
| <input type="checkbox"/> 196 Franchise  |  |   | <input type="checkbox"/> 740 Railway Labor Act                           | <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609         | <input type="checkbox"/> 890 Other Statutory Actions                                   |
| <input type="checkbox"/> 210 Land Condemnation                                    | <input type="checkbox"/> 441 Voting                            | <input type="checkbox"/> 510 Motions to Vacate Sentence                 | <input type="checkbox"/> 790 Other Labor Litigation                      |  | <input type="checkbox"/> 891 Agricultural Acts   |
| <input type="checkbox"/> 220 Foreclosure  | <input checked="" type="checkbox"/> 442 Employment             | <input type="checkbox"/> Habeas Corpus: 530 General                     | <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act                |  | <input type="checkbox"/> 892 Economic Stabilization Act                                |
| <input type="checkbox"/> 230 Rent Lease & Ejectment                               | <input type="checkbox"/> 443 Housing/Accommodations            | <input type="checkbox"/> 535 Death Penalty                              |  |  | <input type="checkbox"/> 893 Environmental Matters                                     |
| <input type="checkbox"/> 240 Torts to Land  | <input type="checkbox"/> 444 Welfare                           | <input type="checkbox"/> 540 Mandamus & Other                           | <input type="checkbox"/> 462 Naturalization Application                  |  | <input type="checkbox"/> 894 Energy Allocation Act                                     |
| <input type="checkbox"/> 245 Tort Product Liability                               | <input type="checkbox"/> 445 Amer. w/Disabilities - Employment | <input type="checkbox"/> 550 Civil Rights                               | <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee              |  | <input type="checkbox"/> 895 Freedom of Information Act                                |
| <input type="checkbox"/> 290 All Other Real Property                              | <input type="checkbox"/> 446 Amer. w/Disabilities - Other      | <input type="checkbox"/> 555 Prison Condition                           | <input type="checkbox"/> 465 Other Immigration Actions                   |  | <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice |
|   | <input type="checkbox"/> 440 Other Civil Rights                |   |  |  | <input type="checkbox"/> 950 Constitutionality of State Statutes                       |

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):  
Age Discrimination in Employment Act "ADEA" (29USC621)Brief description of cause:  
Violations of the ADEA.**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S)**

(See instructions):

JUDGE

DOCKET NUMBER

Explanation:  
9/30/2010  
DATECm Br  
SIGNATURE OF ATTORNEY OF RECORD